FEB 22 1980

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1080

DETROIT POLICE OFFICERS ASSOCIATION,
A Voluntary Mutual Benefit Association, Labor Organization,

Petitioner,

v.

COLEMAN A. YOUNG,
Mayor of the City of Detroit, et al.,

Respondents,

WILLIAM MORGAN, BRIAN BRUNETT and DONALD PRINCE,
Individually and as Representatives of a Class,

Petitioners,

v.

COLEMAN A. YOUNG,
Mayor of the City of Detroit, et al.,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Counsel on Inside Front Cover)

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

WALTER S. NUSSBAUM
AVRAMA P. LITES
20833 Southfield Road, Ste. 100
Southfield, Michigan 48075
(313) 569-2666

SHELDON H. ADLER
21700 Northwestern Highway
Southfield, Michigan 48075
(313) 559-9100

Counsel for Petitioner
The Detroit Police
Officers Association

JOHN F. BRADY
THOMAS M. J. HATHAWAY
RILEY & ROUMELL
720 Ford Building
Detroit, Michigan 48226
(313) 962-8255

Counsel for Petitioners
William Morgan, Brian Brunnett,
Donald Prince and the
Class they Represent

DONALD J. MOONEY, JR.
PAXTON & SEASONGOOD
1700 Central Trust Tower
Cincinnati, Ohio 45202
(513) 352-6760
Of Counsel for All
Petitioners

TABLE OF CONTENTS

Page

THE COURT MAY PROPERLY REVIEW THE OPINION AND ORDER OF THE SIXTH CIRCUIT 1

TABLE OF CASES

Beacon Theatres, Inc. v. *Westover*, 359 U.S. 500 (1959) 2

Brotherhood of Locomotive Firemen & Enginemen v. *Bangor & Arrowstook Railroad Co.*, 389 U.S. 97 (1967) 3

Estelle v. Gamble, 429 U.S. 97 (1960) 2

Hamilton Shoe Company v. *Wolf Bros.*, 240 U.S. 251 (1960) 3

Land v. *Dollar*, 330 U.S. 731 (1947) 2

New York City Transit Authority v. *Beazer*, 440 U.S. 568 (1979) 4

United States v. *General Motors Corporation*, 323 U.S. 373 (1945) 2, 5

Youngstown Sheet & Tube Co. v. *Sawyer*, 343 U.S. 579 (1952) 3

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1080

DETROIT POLICE OFFICERS ASSOCIATION,
A Voluntary Mutual Benefit Association, Labor Organization,

Petitioner,

v.

COLEMAN A. YOUNG,
Mayor of the City of Detroit, et al.,

Respondents,

WILLIAM MORGAN, BRIAN BRUNETT and DONALD PRINCE,
Individually and as Representatives of a Class,

Petitioners,

v.

COLEMAN A. YOUNG,
Mayor of the City of Detroit, et al.,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

THE COURT MAY PROPERLY REVIEW THE OPINION AND ORDER OF THE SIXTH CIRCUIT

As its primary argument against Plaintiffs' Petition, the City contends that the order of the Court of Appeals does

not finally terminate the litigation involved in the Detroit Department's promotional quota. This argument seeks to direct the Court's attention away from the key issues finally disposed of by the Sixth Circuit. The October 12, 1979 opinion of the Court of Appeals reversed the findings of the District Court and dismissed the Plaintiffs' claims under Titles VI and VII of the Civil Rights Act of 1964, and under 42 U.S.C. § 1981. These claims are finally resolved and there will be no further proceedings on them in the district court.

The proceedings on remand would apply only to the Fourteenth Amendment claims of the white Detroit police officers. And the standards outlined for that Constitutional review, Plaintiffs believe, clearly establish the basis for ultimate reversal by this Court. (*See,* Petition, pp. 59-87).

This Court has often granted petitions in cases where all claims have not been finally resolved. Relevant orders and opinions of the Court evidence a practical approach which allows review where the issues presented are "fundamental to the further conduct of the case", and their resolution is likely to shorten rather than lengthen the time needed to bring the case to final judgment. *See United States* v. *General Motors Corporation,* 323 U.S. 373, 377 (1945); *see also, Beacon Theatres, Inc.* v. *Westover,* 359 U.S. 500 (1959); and *Land* v. *Dollar,* 330 U.S. 731, 734, n.2 (1947).

The City argues that this case does not present the types of issues or the procedural context justifying immediate review. However, the authorities cited by the City are clearly distinguishable from this case and its extensive record and exhaustive consideration in both the district and appellate courts.

In *Estelle* v. *Gamble,* 429 U.S. 97 (1976), a case relied upon by the City, the Court reversed an appellate order

which remanded for trial the District Court's dismissal of a prisoner's complaint. The majority agreed to review and reverse on the pleadings, without any factual record, and before trial could occur.

The City relies upon Justice Stevens' dissent, which raised the issue of finality. That dissent specifically notes that the case involved "settled law" and that

> "The crude allegations of this complaint do not provide the kind of factual basis the Court normally requires as a predicate for the adjudication of a novel and serious constitutional issue. . . ." 429 U.S. at 115.

Unlike the circumstances described by Justice Stevens in his dissent, the plaintiffs do not ask this Court "merely to affirm settled law", *Id* at 115. Rather, the Sixth Circuit's opinion involves an unsettled area of law, which this Court has not fully addressed, and regarding which the Circuits are in conflict. This case arises from detailed findings of fact derived from an extensive record, rather than the crude *pro se* pleadings described by Justice Stevens in *Estelle*.

Unlike the petitioners in *Youngstown Sheet & Tube Company* v. *Saywer,* 343 U.S. 579 (1952), the plaintiffs did not seek review upon the Sixth Circuit's order staying the District Court's preliminary injunction in June of 1977. Rather, Plaintiffs waited to seek review until after a full trial on the merits and detailed opinions were issued by the district and appellate courts. Of course, in *Youngstown* the Court also agreed to hear a non-final order.[1]

---

[1] The other authorities cited by the City are also inapplicable. The Court's opinion in *Hamilton Shoe Company* v. *Wolf Bros.*, 240 U.S. 251, 256 (1960) did not grant or deny a petition for a writ of certiorari. The factual context of *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook Railroad Company,* 389 U.S. 327 (1967), which arose from relatively brief contempt proceedings aris-

This case certainly presents the types of issues and circumstances justifying review by this Court, prior to any further action in the District Court.

The findings of the District Court resulted from months of testimony and volumes of documentary exhibits. It is unimaginable that any party can now unearth new evidence relevant to the Constitutional "standards" purportedly allowing racial discrimination which are described by the Sixth Circuit in its opinion (31a-32a). The death of Judge Kaess will force a new district court judge to sift through the record one more time, in search of answers to the questions presented by the Sixth Circuit's opinion (32a). The same record, of course, was before the Sixth Circuit at the time it heard and resolved this case.

A time-consuming remand and re-appeal will also unreasonably prejudice the rights of the Plaintiff class. The order of October 12, 1979 ended the permanent injunction of the District Court, and the Sixth Circuit has declined to preserve that injunction pending action upon this Petition. During the period from February 19, 1978 through October, 1979, when the District Court's injunction was in effect, no promotions were made by the City to the rank of sergeant. The District Court's injunction did not bar promotions, but simply barred the use of a racial quota for any promotions that might occur. (104a). The City chose not to promote when faced with such a restriction.

---

ing from the violation of a temporary restraining order, is clearly distinguishable from the detailed evidentiary record and significant issues presented by this case.

The case of *New York City Transit Authority* v. *Beazer*, 440 U.S. 568, 583-84 N.24 (1979), also cited by the City, involved, *inter alia*, the review by the Court of Title VII issues never addressed by the Court of Appeals. This Court agreed to review those issues, rather than remand them, because of the complete record presented by the case. All issues presented by Plaintiffs' petition have been exhaustively litigated by the parties and fully addressed by the lower courts.

Since the mandate of the Sixth Circuit was issued in this case, the City has been free to promote through use of a racial quota. The Plaintiff class, which never benefited from racially neutral promotions under the injunction, is now exposed to further injury if and when new promotions are made on a 50/50 racial basis. Further delay in an action brought by the DPOA nearly six years ago, on June 10, 1974, will unnecessarily burden the members of the Plaintiff class by allowing the relatively few promotional opportunities available in the coming months to be distributed solely by race, rather than by merit. As more promotions are made under the quota, it will become increasingly difficult for the Courts and the City to remedy the violations and make the Plaintiffs whole should they ultimately prevail.

The Court now has the opportunity to fully and finally resolve the statutory and Constitutional issues presented by the 50/50 promotional quota adopted by the Detroit Department in 1974. The questions presented by the Sixth Circuit's opinion are clearly "fundamental to the further conduct of the case". *United States* v. *General Motors Corp., supra* at 377. In fact, they are dispositive. After more than five years of litigation, the members of the Plaintiff class can reasonably expect the federal courts to resolve their claim of improper racial discrimination, one way or the other, without further delay. The proceedings on remand proposed by the City, in lieu of consideration by this Court, will likely delay by several years the ultimate day of judgment upon the City's racial quota. Yet new proceedings cannot add appreciably to the record upon which the Sixth Circuit or this Court might judge the Constitutionality of that quota.

The interests of the Plaintiff class in a prompt resolution of its claims, and the interests of the Federal courts in

the economy of proceedings coincide. This action need not be subjected to further review below when consideration by this Court can promptly and finally resolve the fundamental issues it presents.

Respectfully submitted,

WALTER S. NUSSBAUM, J.D.
Professional Corporation

AVRAMA P. LITES
20833 Southfield Road, Ste. 100
Southfield, Michigan 48075
(313) 569-2666

SHELDON H. ADLER
21700 Northwestern Highway
Southfield, Michigan 48075
(313) 559-9100

Attorneys for Petitioner
Detroit Police Officers Assn.

RILEY & ROUMELL

By: JOHN F. BRADY
720 Ford Building
Detroit, Michigan 48226
(313) 962-8255

Attorneys for Petitioners,
William Morgan, Brian Brunett,
Donald Prince and the Class
that they represent.

DONALD J. MOONEY, JR.
PAXTON & SEASONGOOD
A Legal Professional Association
1700 Central Trust Tower
Cincinnati, Ohio 45202
(513) 352-6760

Of Counsel for All Petitioners